

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #9	CCRB Case #: 202002738	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/09/2020 5:33 PM	Location of Incident: 1) Alexander Avenue and East 142nd Street; 2) en route to PSA 7; 3) at PSA 7; 4) § 87(2)(b)	Precinct: 40	18 Mo. SOL 10/9/2021	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 04/09/2020 9:06 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/16/2020 11:31 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Victor Carrasquillo	16720	963904	PSA 7
2. POM Shawn Moynihan	03202	953147	PSA 7
3. An officer			PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.POM Victor Carrasquillo	Abuse: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Victor Carrasquillo interfered with § 87(2)(b) use of a recording device.	§ 87(2)(b)
B.POM Victor Carrasquillo	Force: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Victor Carrasquillo used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Victor Carrasquillo	Force: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Victor Carrasquillo used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Shawn Moynihan	Force: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Shawn Moynihan used pepper spray against § 87(2)(b)	§ 87(2)(b)
E.POM Shawn Moynihan	Force: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Shawn Moynihan used pepper spray against individuals.	§ 87(2)(b)
F.POM Shawn Moynihan	Force: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Shawn Moynihan used pepper spray against § 87(2)(b)	§ 87(2)(b)
G.POM Shawn Moynihan	Force: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Shawn Moynihan used physical force against § 87(2)(b)	§ 87(2)(b)
H.POM Shawn Moynihan	Force: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Shawn Moynihan used physical force against § 87(2)(b)	§ 87(2)(b)
I.POM Shawn Moynihan	Force: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Shawn Moynihan restricted § 87(2)(b) breathing.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
J.POM Shawn Moynihan	Discourtesy: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Shawn Moynihan spoke discourteously to § 87(2)(b)	
K. An officer	Force: At Alexander Avenue and East 142nd Street in the Bronx, an officer restricted § 87(2)(b) breathing.	
L.POM Shawn Moynihan	Discourtesy: En route to the PSA 7 stationhouse, Police Officer Shawn Moynihan spoke discourteously to § 87(2)(b)	
M.POM Victor Carrasquillo	Abuse: En route to the PSA 7 stationhouse, Police Officer Victor Carrasquillo did not obtain medical treatment for § 87(2)(b)	
N.POM Shawn Moynihan	Abuse: En route to the PSA 7 stationhouse, Police Officer Shawn Moynihan did not obtain medical treatment for § 87(2)(b)	
O.POM Victor Carrasquillo	Force: At the PSA 7 stationhouse, Police Officer Victor Carrasquillo used physical force against § 87(2)(b)	
P.POM Shawn Moynihan	Force: At the PSA 7 stationhouse, Police Officer Shawn Moynihan used physical force against § 87(2)(b)	
Q.POM Victor Carrasquillo	Force: At the PSA 7 stationhouse, Police Officer Victor Carrasquillo restricted § 87(2)(b) breathing.	
R.POM Shawn Moynihan	Force: At the PSA 7 stationhouse, Police Officer Shawn Moynihan restricted § 87(2)(b) breathing.	
S.POM Shawn Moynihan	Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Shawn Moynihan acted discourteously toward § 87(2)(b)	
T.POM Shawn Moynihan	Abuse: At the PSA 7 stationhouse, Police Officer Shawn Moynihan refused to provide his name to § 87(2)(b)	
U.POM Shawn Moynihan	Abuse: At the PSA 7 stationhouse, Police Officer Shawn Moynihan refused to provide his shield number to § 87(2)(b)	
V.POM Shawn Moynihan	Discourtesy: At the PSA 7 stationhouse, Police Officer Shawn Moynihan spoke discourteously to § 87(2)(b)	
W.POM Shawn Moynihan	Abuse: At the PSA 7 stationhouse, Police Officer Shawn Moynihan threatened to arrest § 87(2)(b)	
X.POM Victor Carrasquillo	Abuse: At the PSA 7 stationhouse, Police Officer Victor Carrasquillo refused to provide his name to § 87(2)(b)	
Y.POM Victor Carrasquillo	Abuse: At the PSA 7 stationhouse, Police Officer Victor Carrasquillo refused to provide his shield number to § 87(2)(b)	
Z.POM Shawn Moynihan	Untruthful Stmt.: Police Officer Shawn Moynihan provided a misleading official statement to the CCRB.	

Case Summary

§ 87(2)(b) filed this complaint with IAB via telephone on April 14, 2020. § 87(2)(b) did not witness the incident in question. IAB generated original log § 87(2)(b), and a spin-off was then forwarded to the CCRB, where it was received on April 16, 2021.

On April 9, 2020, at approximately 5:33 PM, § 87(2)(b) and § 87(2)(b) encountered PO Victor Carrasquillo and PO Shawn Moynihan of PSA 7 at the intersection of Alexander Avenue and East 142nd Street in the Bronx. § 87(2)(b) and § 87(2)(b) followed the officers' unmarked vehicle on foot and recorded videos of the officers, at which point the officers exited their vehicle and arrested § 87(2)(b) for Disorderly Conduct.

PO Carrasquillo allegedly knocked § 87(2)(b) phone from his hand, interfering with his ability to record the incident (**Allegation A: Abuse of Authority**, § 87(2)(g)) and then allegedly punched § 87(2)(b) in the face (**Allegation B: Force**, § 87(2)(g)). PO Carrasquillo also allegedly pushed § 87(2)(b) against a vehicle, where § 87(2)(b) reportedly struck his head (**Allegation C: Force**, § 87(2)(g)). Meanwhile, PO Moynihan discharged OC spray toward § 87(2)(b) and other unidentified individuals (**Allegations D and E: Force**, § 87(2)(g)) and used OC spray against § 87(2)(b) (**Allegation F: Force**, § 87(2)(g)). PO Moynihan also kned and punched § 87(2)(b) (**Allegation G: Force**, § 87(2)(g)). PO Moynihan allegedly brought § 87(2)(b) to the ground by pulling on a gold chain necklace worn around his neck, restricting § 87(2)(b) breathing (**Allegation H and I: Force**, § 87(2)(g)). After the officers handcuffed § 87(2)(b) PO Moynihan said to § 87(2)(b) "Get in the fucking car" (**Allegation J: Discourtesy**, § 87(2)(g)). Additionally, an officer allegedly repositioned § 87(2)(b) jacket such that it restricted his breathing (**Allegation K: Force**, § 87(2)(g)). Although the officers initially intended to arrest § 87(2)(b) ultimately, they did not do so.

En route to the PSA 7 stationhouse, § 87(2)(b) informed the officers that he suffered from asthma and that, due to exposure to OC spray, he was having difficulty breathing and required medical attention. In response, PO Moynihan said to § 87(2)(b) "Shut the fuck up" (**Allegation L: Discourtesy**, § 87(2)(g)). Additionally, although § 87(2)(b) appeared to lose consciousness in the rear of the officers' vehicle, the officers did not obtain medical attention for him at that time (**Allegations M and N: Abuse of Authority**, § 87(2)(g)).

Upon arrival at the PSA 7 stationhouse, § 87(2)(b) appeared to be unconscious. Together, PO Carrasquillo and PO Moynihan pulled § 87(2)(b) from the vehicle and dragged him, on the ground, into the stationhouse (**Allegations O and P: Force**, § 87(2)(g)). § 87(2)(b) appeared to regain consciousness and complained that the officers were choking him (**Allegations Q and R: Force**, § 87(2)(g)). Officers then lodged § 87(2)(b) in a holding cell.

At approximately 6:26 PM, EMS personnel responded to the PSA 7 stationhouse and transported § 87(2)(b) to § 87(2)(b) in the Bronx. There, PO Moynihan allegedly removed § 87(2)(b) face mask, against § 87(2)(b) wishes (**Allegation S: Discourtesy**, § 87(2)(g)).

Officers then returned § 87(2)(b) to the PSA 7 stationhouse. He was issued a Desk Appearance Ticket and released. As § 87(2)(b) departed, PO Moynihan allegedly refused to provide him with his name and shield number, allegedly responding, "Get the fuck out of here before I put your ass back in that cell" (**Allegations T and U: Abuse of Authority**, § 87(2)(g)). **Allegation V: Discourtesy**, § 87(2)(g)). **Allegation W: Abuse of Authority**, § 87(2)(g)). PO Carrasquillo also allegedly refused to provide his name and shield number to § 87(2)(b) (**Allegations X and Y: Abuse of Authority**, § 87(2)(g)).

Additionally, the investigation determined that PO Moynihan provided a misleading official statement to the CCRB on May 6, 2021 (**Allegation Z: Untruthful Statement**, § 87(2)(g) [REDACTED]).

PO Carrasquillo recorded two BWC videos pertaining to this incident. PO Moynihan recorded no BWC video, reportedly due to a faulty BWC. The investigation also obtained three cell phone videos, two recorded by § 87(2)(b) [REDACTED] and one recorded by an unidentified civilian bystander. These videos were provided to the investigation by a civil attorney whom § 87(2)(b) [REDACTED] had retained.

IM West submitted an EDCIR pertaining to this case on October 21, 2020.

This case was reassigned from Inv. Leilani Rhodes to Inv. Gregory Finch on August 18, 2020, and then from Inv. Finch to Inv. Samuel Ross on February 16, 2021.

On March 30, 2021, § 87(2)(b) [REDACTED] who identified herself as § 87(2)(b) [REDACTED] former wife, informed Inv. Ross that, unrelated to the incident in question, § 87(2)(b) [REDACTED] had passed away.

Findings and Recommendations

Allegation (A) Abuse of Authority: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Victor Carrasquillo interfered with § 87(2)(b) [REDACTED] use of a recording device.

It is undisputed that § 87(2)(b) [REDACTED] was being placed under arrest for disorderly conduct after allegedly following the officers on foot in the roadway, shouting about the officers' presence, and drawing others' attention to them, causing a crowd to form.

§ 87(2)(b) [REDACTED] stated that he was holding his phone in his hand as PO Carrasquillo approached him, and that he intended to record the interaction, but PO Carrasquillo immediately "snatched" the phone away from § 87(2)(b) [REDACTED] preventing him from recording a video.

PO Carrasquillo stated that when he approached, § 87(2)(b) [REDACTED] was holding a cell phone. PO Carrasquillo reached for § 87(2)(b) [REDACTED] arm, but § 87(2)(b) [REDACTED] pulled back. PO Carrasquillo did not knock or take § 87(2)(b) [REDACTED] phone from his hand and did not know what became of the phone. PO Carrasquillo did not intend to interfere with § 87(2)(b) [REDACTED] ability to record the interaction. He approached to place § 87(2)(b) [REDACTED] under arrest and took hold of his arm in order to do so.

PO Moynihan stated that he did not see if § 87(2)(b) [REDACTED] was holding up a phone as if recording the officers at any time. He did not see PO Carrasquillo knock or take a phone from § 87(2)(b) [REDACTED] hand, or interfere with § 87(2)(b) [REDACTED] ability to record the incident.

The investigation was unable to obtain a statement from § 87(2)(b) [REDACTED] or to identify any other civilian bystander.

The first of PO Carrasquillo's two BWC videos captured him approaching § 87(2)(b) [REDACTED] (Board Review 01). In that video, at the 26 second mark, PO Carrasquillo exits his vehicle and approaches § 87(2)(b) [REDACTED] who holds a cell phone in his left hand, as if recording a video. Advancing the video frame-by-frame (by pressing the "E" key in VLC) from the 30 second mark shows that PO Carrasquillo uses his left hand to take hold of § 87(2)(b) [REDACTED] and then, at the 31 second mark, appears to grasp § 87(2)(b) [REDACTED] cell phone. § 87(2)(b) [REDACTED] and PO Carrasquillo then engage in a physical altercation, and the cell phone is not visible at any later point.

NYPD Patrol Guide Procedure 203-29, pertaining to individuals observing, photographing, and/or recording police activity, states that individuals have a right to lawfully observe and/or record police activity in public places, such as streets and sidewalks, but that the right to observe and/or record police action can be limited for reasons such as the safety of officers or other members of the public, or when a violation of law is committed by the individual(s) who are observing/videotaping (Board Review 02).

Here, PO Carrasquillo approached § 87(2)(b) in order to effect his arrest for Disorderly Conduct.

§ 87(2)(g)

Allegation (B) Force: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Victor Carrasquillo used physical force against § 87(2)(b)

Allegation (C) Force: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Victor Carrasquillo used physical force against § 87(2)(b)

Allegation (G) Force: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Shawn Moynihan used physical force against § 87(2)(b)

§ 87(2)(b) stated that after PO Carrasquillo took his phone, PO Carrasquillo immediately punched him in the face. PO Carrasquillo then pushed him backward. As a result, § 87(2)(b) head collided with a parked vehicle. § 87(2)(b) also stated that later in the struggle (after the use of OC spray; see allegations D, E, and F, below) PO Moynihan punched him on the back of the head. § 87(2)(b) described resisting the officers' efforts to handcuff him by stiffening his body and folding his arms to his chest to keep them away from the officers.

In addition to the punches which § 87(2)(b) alleged, a civilian bystander's video shows PO Carrasquillo and PO Moynihan using knee strikes against § 87(2)(b) between the 4 second mark and the 9 second mark (Board Review 03).

§ 87(2)(b) did not describe sustaining any serious injury. At the PSA 7 stationhouse, Captain Jerome Bacchi of PSA 7 interviewed § 87(2)(b) regarding this incident and took a photograph of § 87(2)(b) face, which was linked to a TRI report. The photo does not show any apparent injury (Board Review 04).

PO Carrasquillo denied punching § 87(2)(b) upon first approach. He stated that when he attempted to take hold of § 87(2)(b) arms to handcuff him, § 87(2)(b) pulled away, took a fighting stance, and balled his fists. PO Carrasquillo became fearful for his safety and punched § 87(2)(b) in the face, after which § 87(2)(b) punched PO Carrasquillo numerous times on the abdomen. PO Carrasquillo did not know how many times § 87(2)(b) punched him. PO Carrasquillo then struck § 87(2)(b) again. PO Carrasquillo also stated that both he and § 87(2)(b) made contact with a parked vehicle while they fought, but PO Carrasquillo did not know if § 87(2)(b) struck his head against the vehicle, and he did not push § 87(2)(b) against the vehicle.

PO Moynihan stated that as he approached § 87(2)(b) he heard a commotion behind him. He turned and saw § 87(2)(b) actively fighting with PO Carrasquillo. He did not remember if PO Carrasquillo punched § 87(2)(b) and did not recall PO Carrasquillo pushing § 87(2)(b) into a parked vehicle. PO Moynihan left § 87(2)(b) and approached PO Carrasquillo to help overcome § 87(2)(b) active resistance. § 87(2)(b) refused to give up his hands, tensed his body, and threw punches. PO Moynihan did not know if § 87(2)(b) struck PO Carrasquillo, and he did not remember if § 87(2)(b) struck him, due to the rush of adrenaline he experienced during the fight.

PO Moynihan issued hand strikes to § 87(2)(b) upper body in order to gain § 87(2)(b) compliance. He did not recall specifically where he struck § 87(2)(b). He did not recall using knee strikes. PO Moynihan stated further that later, after the officers brought § 87(2)(b) to the ground, § 87(2)(b) continued to resist. PO Moynihan used further hand strikes. Again, PO Moynihan did not recall specifically where he struck § 87(2)(b). Finally, the officers were able to cuff § 87(2)(b) hands behind his back.

Both PO Carrasquillo and PO Moynihan prepared TRI reports pertaining to this incident. PO Carrasquillo's TRI report indicates that he used hand strikes to overcome § 87(2)(b) resistance or aggression, and in self-defense (Board Review 05). According to PO Moynihan's TRI report, he used hand strikes and OC spray (addressed below in the analyses of Allegations D, E, and F) in defense of a fellow officer (Board Review 06).

As noted, the first of PO Carrasquillo's two BWC videos (Board Review 01) captured the beginning of a physical altercation between the two men. However, the video does not show the altercation clearly, and does not show whether § 87(2)(b) took a fighting stance as PO Carrasquillo described. Beginning after the 29 second mark, this video appears to show § 87(2)(b) falling backward onto the hood of a parked vehicle when PO Carrasquillo makes contact with him. The car's alarm begins to sound. However, the video does not show if PO Carrasquillo pushed § 87(2)(b) onto the vehicle or if § 87(2)(b) fell spontaneously, and the video does not show if § 87(2)(b) struck his head against the vehicle.

The above-referenced civilian cell phone video (Board Review 03), which captured the officers' knee strikes, also captured PO Moynihan saying to § 87(2)(b) after the 23 second mark, "Stop resisting," and twice, "Put your hands behind your back." It also shows PO Moynihan then punching § 87(2)(b) on the head, at the 30 second mark.

The content of a separate cell phone video, recorded by § 87(2)(b) overlaps with that of the cell phone video described earlier. § 87(2)(b) video shows PO Moynihan using additional hand strikes against § 87(2)(b) after the 15 second mark (Board Review 07).

PO Carrasquillo's second BWC video shows the officers transporting § 87(2)(b) to the PSA 7 stationhouse. At the 3 minute 39 second mark, PO Carrasquillo says about § 87(2)(b) "He did try to throw some blows" (Board Review 08).

According to NYPD Patrol Guide Procedure 221-01, "Force Guidelines," force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances (Board Review 09). Further, NYPD Patrol Guide Procedure 221-02 (Use of Force) defines "active resisting" as actions including physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody (also Board Review 09, page 5).

No BWC video showed the beginning of the fight between § 87(2)(b) and PO Carrasquillo, and therefore the investigation cannot confirm PO Carrasquillo's testimony that § 87(2)(b) took a fighting stance. The video also does not clearly show whether PO Carrasquillo pushed § 87(2)(b) as alleged. However, PO Carrasquillo's first BWC video indicates that § 87(2)(b) immediately resisted PO Carrasquillo's efforts to apprehend him. Further, the two above-cited civilian cell phone videos showed that § 87(2)(b) continued to resist after the officers' use of knee and hand strikes. Cell phone video also shows PO Moynihan issuing § 87(2)(b) several verbal commands to stop

resisting and to give up his hands, and PO Carrasquillo's second BWC video shows PO Carrasquillo stating after the arrest that § 87(2)(b) threw punches at the officers.

Although there are gaps in video evidence, in light of the above facts, the investigation determined by a preponderance of the evidence that PO Moynihan and PO Carrasquillo used knee and hand strikes in response to § 87(2)(b) active resistance. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (D) Force: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Shawn Moynihan used pepper spray against § 87(2)(b)

Allegation (E) Force: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Shawn Moynihan used pepper spray against individuals.

§ 87(2)(b) stated that while he struggled with the officers, PO Moynihan discharged OC spray toward § 87(2)(b). As noted, the investigation was unable to obtain a statement from § 87(2)(b) or to identify other civilian bystanders.

PO Moynihan stated that while he and PO Carrasquillo fought with § 87(2)(b) § 87(2)(b) and other unidentified individuals approached in an aggressive manner. PO Moynihan characterized their approach as "aggressive" because they moved quickly, yelled, and used profanity. PO Moynihan was not familiar with the other individuals and did not remember how many people were gathered with § 87(2)(b). PO Moynihan removed his OC spray and dispersed it into the crowd for the officers' safety. He did not know if the OC spray made contact with the individuals in the crowd, but it was effective, as they dispersed.

The first civilian cell phone described above (Board Review 03) shows, at the 8 second mark, that while the officers struggled with § 87(2)(b) PO Moynihan turned away from § 87(2)(b) yelled twice, "Back up," and discharged OC spray at an individual or individuals out of the video's frame. The video shows neither how many individuals are there, nor how closely they approach, nor their behaviors or demeanors.

According to NYPD Patrol Guide Procedure 221-07 (Board Review 10), pertaining to the use of oleoresin capsicum pepper spray devices, OC pepper spray may be used to gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other persons. OC pepper spray may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance. This procedure advises that an officer should "avoid" discharging OC pepper spray indiscriminately over a large area for disorder control. However, the Patrol Guide does not specifically prohibit such action. As noted above, according to NYPD Patrol Guide Procedure 221-01, in all circumstances, any application or use of force must be reasonable under the circumstances (Board Review 09).

PO Moynihan stated that he dispersed his pepper spray into a crowd of civilians, which included § 87(2)(b) stating that they moved quickly towards him, yelling and using profanity. § 87(2)(b) was engaged in an altercation with the officers at this time and did not describe § 87(2)(b) behavior immediately prior to PO Moynihan discharging OC spray in § 87(2)(b) direction. In fact, § 87(2)(b) did not describe PO Moynihan discharging OC spray at any other civilian

bystander. Because the investigation was unable to obtain a statement from § 87(2)(b) and because the above-cited cell phone video does not capture § 87(2)(b) behavior or the behavior of the other bystanders in question, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation (F) Force: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Shawn Moynihan used pepper spray against § 87(2)(b)

§ 87(2)(b) stated that while he struggled with PO Carrasquillo, PO Moynihan ran to them and sprayed § 87(2)(b) in the face with OC spray. § 87(2)(b) did not specify the distance from which PO Moynihan discharged the OC spray, or the duration of the burst.

PO Moynihan stated that while he and PO Carrasquillo struggled with § 87(2)(b) before the officers took § 87(2)(b) to the ground, he discharged OC spray at § 87(2)(b) face. PO Moynihan did so in close quarters and discharged the OC spray into § 87(2)(b) eyes, but the OC spray was ineffective, and § 87(2)(b) continued to fight. PO Moynihan did not recall if he issued a single burst or more than one burst of OC spray, and he did not recall for how long he discharged the OC spray.

No BWC video or civilian cell phone video captured PO Moynihan using OC spray against § 87(2)(b)

As noted above, per NYPD Patrol Guide Procedure 221-07, OC spray may be used to gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other persons. OC pepper spray may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance (Board Review 10).

§ 87(2)(g) Further, he did not comply despite officers using verbal commands, hand strikes, and knee strikes. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation (H) Force: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Shawn Moynihan used physical force against § 87(2)(b)

Allegation (I) Force: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Shawn Moynihan restricted § 87(2)(b) breathing.

§ 87(2)(b) stated that PO Moynihan took him to the ground by pulling on a gold chain necklace § 87(2)(b) wore around his neck.

PO Moynihan stated that he and PO Carrasquillo took § 87(2)(b) to the ground, but he did not recall specifically how they did so. PO Carrasquillo recalled that he and § 87(2)(b) both fell to the ground, but he did not know what caused them to fall. Both PO Moynihan and PO Carrasquillo denied that either officer pulled on a chain necklace worn around § 87(2)(b) neck. PO Moynihan denied taking any action to restrict § 87(2)(b) breathing.

§ 87(2)(b) made the same allegation when interviewed by Captain Bacchi at the PSA 7 stationhouse. He stated that Captain Bacchi would be able to see the resulting mark on § 87(2)(b)

neck. Captain Bacchi took a photograph of § 87(2)(b) neck (Board Review 11). This photo was also linked to a TRI. The photo does not clearly show any injury on § 87(2)(b) neck.

The first civilian cell phone video described above (Board Review 03) captures the officers taking § 87(2)(b) to the ground after the 14 second mark. However, due to the distance of the camera from the officer and § 87(2)(b) and due to the angle, it is not clear where PO Moynihan takes hold of § 87(2)(b) as they bring him to the ground.

§ 87(2)(g)

Allegation (J) Discourtesy: At Alexander Avenue and East 142nd Street in the Bronx, Police Officer Shawn Moynihan spoke discourteously to § 87(2)(b)

PO Carrasquillo's second BWC video (Board Review 08) shows, after the 45 second mark, that as PO Moynihan attempted to load § 87(2)(b) into the officers' vehicle, an officer said to § 87(2)(b) "Get in the fucking car." The second cell phone video recorded by § 87(2)(b) (Board Review 07) captures the same remark, at the 1 minute 19 second mark.

Neither PO Moynihan nor PO Carrasquillo recalled making the remark in question. During his CCRB interview, PO Moynihan reviewed the relevant portion of BWC video, but he stated that he could not identify the voice as his own. PO Carrasquillo also reviewed this portion of video and stated that while the voice was not his own, he could not identify it as PO Moynihan's.

The investigation identified the voice in question as belonging to PO Moynihan. Only PO Moynihan attempted to guide § 87(2)(b) into the vehicle at the moment in question. Two other uniformed officers had approached and stood nearby, but they had no interaction with § 87(2)(b). Further, a comparison of the voice in question to other statements made by PO Moynihan, captured in incident video and during his CCRB interview, confirm that it was PO Moynihan who made this remark.

According to NYPD Patrol Guide Procedure 200-02 (Board Review 12), police officers must treat every citizen with compassion, courtesy, professionalism, and respect. Two videos show that rather than speak courteously to § 87(2)(b) PO Moynihan addressed him using profanity.

The ruling in DAO-DCT case #2015-15012 (Board Review 13) has established that an officer's use of profanity is excusable in the context of a dynamic situation over which the officer is trying to gain control. § 87(2)(g) § 87(2)(b) was rear-cuffed, and the videos show that two uniformed officers had responded to assist PO Moynihan and PO Carrasquillo. Further, PO Moynihan did not acknowledge this use of profanity, and therefore he provided no reasonable explanation.

§ 87(2)(g)

Allegation (K) Force: At Alexander Avenue and East 142nd Street in the Bronx, an officer restricted § 87(2)(b) breathing.

According to § 87(2)(b) when PO Carrasquillo and PO Moynihan loaded him into their vehicle, he

discovered that an officer had pulled his jacket “in front of him,” making it difficult for him to breathe. § 87(2)(b) did not provide any clarification as to how an officer pulled his jacket to his front side, or how this obstructed his breathing.

PO Carrasquillo’s second BWC video (Board Review 08) shows that when the officers lifted § 87(2)(b) to his feet, the rear of his jacket had been pulled over his head to his chest, while his arms remained in the jacket sleeves. Neither his head nor face was covered, but the body of the jacket was bunched on § 87(2)(b) chest. This is first visible between the 30 second and 40 second marks. This is also visible beginning at the 1 minute 8 second mark, inside of the officers’ vehicle. Afterward, as addressed below in the analyses of Allegations M through P, the video shows that § 87(2)(b) complained about difficulty breathing, but he claimed that this was caused by his having been sprayed with OC spray and because he suffered from asthma.

None of the videos show how or when § 87(2)(b) jacket was pulled to his front side, but PO Carrasquillo’s first BWC video (Board Review 01) shows that § 87(2)(b) wore his jacket normally prior to his altercation with the officers.

Neither PO Carrasquillo nor PO Moynihan recalled § 87(2)(b) jacket having been pulled over his head to the front of his chest. PO Moynihan was shown portions of BWC video which showed that § 87(2)(b) jacket was positioned in that manner, but he had no independent recollection of this having taken place.

In absence of any independent testimony or clarifying video evidence, the investigation was unable to determine how exactly § 87(2)(b) jacket came to be pulled to his front side. The video does not show the jacket in a position which would clearly restrict § 87(2)(b) breathing, and the investigation was unable to confirm that the position of the jacket restricted § 87(2)(b) breathing as alleged. Additionally, it is unclear whether this act was intentional or the incidental result of the altercation and handcuffing process. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (L) Discourtesy: En route to the PSA 7 stationhouse, Police Officer Shawn Moynihan spoke discourteously to § 87(2)(b)

PO Carrasquillo’s second BWC video (Board Review 08) captured the officers transporting § 87(2)(b) to the PSA 7 stationhouse. The video shows, immediately after the 1 minute 38 second mark, that when § 87(2)(b) said to the officers, “Take me to the hospital, because I got asthma and you sprayed me with mace,” PO Moynihan responded, “Shut the fuck up.”

Neither PO Moynihan nor PO Carrasquillo recalled PO Moynihan having made this remark. The relevant portion of video was played for PO Moynihan three times during his CCRB interview, but he stated that he was unable to hear the remark in question. PO Carrasquillo also reviewed this portion of video and stated that he had no independent recollection of this remark.

As noted, NYPD Patrol Guide Procedure 200-02 (Board Review 12) instructs that police officers treat every citizen with compassion, courtesy, professionalism, and respect. The above-cited ruling in DAO-DCT case #2015-15012 (Board Review 13) established that an officer’s use of profanity is excusable in the context of a dynamic situation over which the officer is trying to gain control.

§ 87(2)(g) § 87(2)(b) was rear-cuffed in the back seat of the officers’ vehicle and was requesting medical attention when PO Moynihan responded by using

profanity. As above, PO Moynihan did not acknowledge this use of profanity and therefore provided no reasonable explanation.

§ 87(2)(g)

Allegation (M) Abuse of Authority: En route to the PSA 7 stationhouse, Police Officer Victor Carrasquillo did not obtain medical treatment for § 87(2)(b)

Allegation (N) Abuse of Authority: En route to the PSA 7 stationhouse, Police Officer Shawn Moynihan did not obtain medical treatment for § 87(2)(b)

Allegation (O) Force: At the PSA 7 stationhouse, Police Officer Victor Carrasquillo used physical force against § 87(2)(b)

Allegation (P) Force: At the PSA 7 stationhouse, Police Officer Shawn Moynihan used physical force against § 87(2)(b)

§ 87(2)(b) stated that while en route to the PSA 7 stationhouse, he loudly informed the officers that he could not breathe. In response, PO Moynihan told him to shut up. § 87(2)(b) then lost consciousness in the rear of the officers' vehicle. He did not regain consciousness until the officers removed him from the vehicle outside of the PSA 7 stationhouse. When he regained consciousness, he was lying on the ground outside of the PSA 7 stationhouse. PO Moynihan and PO Carrasquillo took hold of § 87(2)(b) arms and dragged him from the sidewalk into the stationhouse. After being lodged in a holding cell, § 87(2)(b) was later transported to § 87(2)(b) in the Bronx.

PO Moynihan stated that during transport to the stationhouse, § 87(2)(b) asked for medical attention and the officers explained that they would obtain medical treatment for him at their command. § 87(2)(b) then went limp and pretended to be unconscious. PO Moynihan had been employed as an EMT paramedic by private companies in New Jersey and Philadelphia for nine years before working as a police officer and felt able to determine whether an individual was genuinely unconscious or was pretending to be unconscious. In this case, he determined that § 87(2)(b) was putting on "an act." He determined this by observing § 87(2)(b) breathing patterns, skin color, and nailbed color, and he saw that § 87(2)(b) opened his eyes and closed them again. PO Moynihan did not recall § 87(2)(b) complaining that he suffered from asthma or that he was having difficulty breathing or making any other medical complaint.

PO Moynihan stated further that upon arrival outside of the PSA 7 stationhouse, he opened the door for § 87(2)(b) and asked him to exit. § 87(2)(b) continued to pretend to be unconscious. PO Moynihan gave § 87(2)(b) several opportunities to exit, but he did not comply. PO Moynihan then reached underneath § 87(2)(b) arms and removed him from the back seat. According to PO Moynihan, § 87(2)(b) revealed at this time that he was not actually unconscious. When unconscious, a person has no control over their limbs. However, when PO Moynihan removed § 87(2)(b) from the vehicle, § 87(2)(b) controlled his limbs, and they did not "flop" around as would those of a genuinely unconscious person. PO Moynihan laid § 87(2)(b) on the ground next to the vehicle. § 87(2)(b) continued to pretend to be unconscious and again went limp. PO Moynihan and PO Carrasquillo took hold of § 87(2)(b) by his jacket and under his arms and carried him into the stationhouse. When the officers lifted § 87(2)(b) he no longer pretended to be unconscious. He yelled at the officers, indicating to PO Moynihan that § 87(2)(b) had not genuinely been unconscious. The officers brought him to the desk, where he stood up with some assistance.

PO Moynihan did not believe that the NYPD would have any documented record of his prior experience as an EMT. The NYPD had not provided him with any specific recognition of his prior

emergency medical experience.

PO Carrasquillo also stated that during transport, § 87(2)(b) appeared to pretend to lose consciousness. He had been complaining and yelling, when suddenly, he let out a grunt and dropped onto the rear seat, “like a cartoon character.” PO Carrasquillo did not believe that § 87(2)(b) had genuinely lost consciousness. In his experience as a police officer, arrestees frequently tried to “pull a fast one” in this manner. Although § 87(2)(b) had fallen over, he was still moving his hands and readjusting his legs. Additionally, “he was still breathing.” PO Carrasquillo was driving at this time and made these observations when he briefly looked into the rear seat at § 87(2)(b). PO Carrasquillo did not have any training or specific expertise in addressing these sorts of medical questions. His partner, PO Moynihan, however, had previously undergone EMS training. PO Carrasquillo believed that PO Moynihan also knew that § 87(2)(b) was “faking it.”

PO Carrasquillo also stated that upon arrival outside of PSA 7, the officers gave § 87(2)(b) more than one opportunity to exit the vehicle of his own power, but he remained laid down across the rear seat. The officers took hold of § 87(2)(b) arms and removed him from the vehicle. He did not support his own weight. He was still pretending, in PO Carrasquillo’s estimation, to be unconscious. However, when the officer began to carry § 87(2)(b) into the stationhouse, § 87(2)(b) began to yell. The officers then carried him into the stationhouse and brought him to the desk.

PO Carrasquillo’s second BWC video (Board Review 08) captured this sequence of events. At the 1 minute mark, PO Carrasquillo enters the vehicle. The camera then turns around to show § 87(2)(b) seated in the rear of the vehicle with his hands behind his back. Then, at the 1 minute 38 second mark, § 87(2)(b) says, “Take me to the hospital because I got asthma and you sprayed me with mace.” PO Moynihan responds, “Shut the fuck up.” PO Carrasquillo says that § 87(2)(b) had no problem fighting back. After the 3 minute 10 second mark, § 87(2)(b) leans forward and says to the officers, “Take me to the hospital. I cannot breathe and you sprayed me with mace.” § 87(2)(b) then falls over onto the back seat. PO Moynihan says, “Stop moving around. Knock it off.” At the 3 minute 40 second mark, the camera is re-positioned, showing that § 87(2)(b) still lies across the rear seat.

The vehicle comes to a stop at the 3 minute 50 second mark and both officers exit. The officers move to the rear driver side and open the door, ordering § 87(2)(b) to exit the vehicle. PO Moynihan says, “We’re not playing this game.” § 87(2)(b) lies across the rear seat, unmoving. PO Carrasquillo tells § 87(2)(b) to “grow up” and says that he is behaving immaturely. PO Carrasquillo then moves to the driver side and opens the rear door, again showing § 87(2)(b) lying across the rear seat, unmoving. He does not respond when the officers issue further orders for him to exit the vehicle. After the 4 minute 30 second mark, PO Moynihan takes hold of § 87(2)(b) and pulls him from the vehicle, sliding him from the back seat onto the pavement. PO Carrasquillo moves to the passenger side, showing § 87(2)(b) lying, unmoving, on the ground.

After the 4 minute 50 second mark, PO Moynihan and PO Carrasquillo take hold of § 87(2)(b) upper body and then drag him, along the ground, into the stationhouse. He yells at the officers, complaining that they are choking him (addressed below in the analyses of Allegations Q and R) and yells for them to let go of him. Shortly after the 5 minute 30 second mark, he stands up in front of the desk.

PO Moynihan reviewed the above-summarized portions of BWC video during his CCRB interview. In response to the portion of video showing § 87(2)(b) stating that he could not breathe, before falling over onto his side, PO Moynihan stated that he could not hear the remark in question. Nonetheless, the video showed § 87(2)(b) falling over onto his side in the rear seat. PO Moynihan

stated that he could not determine based on this portion of video if he had been able, at that time in the vehicle, to determine whether or not § 87(2)(b) was genuinely unconscious. After reviewing the video until after the officers' and § 87(2)(b) arrival at PSA 7, PO Moynihan stated that based on the video, he was unable to tell when he determined that § 87(2)(b) was not genuinely unconscious. However, he recalled that during transport to PSA 7, as he looked at § 87(2)(b) over his shoulders, on both sides, he was able to determine that § 87(2)(b) was not genuinely unconscious. He was able to make this determination while the vehicle was still moving, before exiting the vehicle upon arrival at PSA 7. PO Moynihan also stated that if § 87(2)(b) had been in need of medical attention at that time, he would have obtained medical attention for him.

PO Carrasquillo also reviewed the portions of BWC video here in question. PO Carrasquillo stated that he did not independently recall § 87(2)(b) reporting that he suffered from asthma. PO Carrasquillo clarified that the portion of video showing § 87(2)(b) stating that he could not breathe and then falling onto his side was the moment PO Carrasquillo had described as § 87(2)(b) behaving "like a cartoon character." PO Carrasquillo also stated that upon arrival at the stationhouse, he was certain that § 87(2)(b) was pretending to be unconscious. When asked how he made this determination, PO Carrasquillo stated that he could see § 87(2)(b) breathing. When asked if an unconscious person might still be breathing, PO Carrasquillo stated that he could see § 87(2)(b) hands moving under his jacket. PO Carrasquillo stated that the video showed § 87(2)(b) hands moving. When asked if § 87(2)(b) was rear-cuffed, PO Carrasquillo stated only that § 87(2)(b) jacket was moving, at his front, between the 4 minute 20 second mark and the 4 minute 35 second mark.

NYPD Patrol Guide Procedure 210-04, pertaining to prisoners requiring medical/psychiatric treatment, states that when a prisoner in custody requires medical/psychiatric treatment, an officer must request an ambulance and remove the prisoner to a hospital directly from the place of arrest, if necessary (Board Review 14). In all life-threatening situations, apparent heart attack, breathing difficulties, serious fractures, severe hemorrhaging, epilepsy, extreme emotional disturbance, etc., a prisoner will be removed to the nearest hospital.

According to NYPD Patrol Guide Procedure 221-07, pertaining to the use of OC spray, after effecting the arrest of the person against whom OC spray was deployed, officers are to request EMS response once the situation is under control; advise the person sprayed that EMS is responding; and remove the subject from the contaminated area and expose to fresh air while awaiting the arrival of EMS, or transportation to hospital/stationhouse, if tactically feasible (Board Review 10).

Lastly NYPD Patrol Guide Procedure 221-01, "Force Guidelines," states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances (Board Review 09).

Video footage shows § 87(2)(b) stating that he cannot breathe and requesting medical attention seconds before falling over onto the back seat of the police vehicle. While there are procedures that allow for officers to process an arrest prior to obtaining medical attention for them, the same procedure instructs officers to request an ambulance immediately if necessary and to remove the prisoner to the nearest hospital for life threatening situations which include breathing difficulties. While both officers stated that they believed § 87(2)(b) was merely pretending to have lost consciousness, he had also previously been complaining of breathing difficulties and given the severity of § 87(2)(b) apparent condition, the officers should have requested EMS personnel to assess him. Instead, the officers dragged him, while still apparently unconscious, towards the

precinct. § 87(2)(g)

In addition, given the use of OC spray against § 87(2)(b) officers were required to request EMS once the situation was under control and failed to do so.

§ 87(2)(g)

Allegation (Q) Force: At the PSA 7 stationhouse, Police Officer Victor Carrasquillo restricted § 87(2)(b) breathing.

Allegation (R) Force: At the PSA 7 stationhouse, Police Officer Shawn Moynihan restricted § 87(2)(b) breathing.

PO Carrasquillo's second BWC video (Board Review 08) shows that as he and PO Moynihan dragged § 87(2)(b) into the stationhouse, between the 4 minute 50 second mark and the 5 minute 30 second mark, § 87(2)(b) regains consciousness and complains loudly that the officers are choking him. The video does not show clearly whether the officers took any action which would, in fact, have restricted § 87(2)(b) breathing.

PO Moynihan acknowledged that when he and PO Carrasquillo brought § 87(2)(b) inside, § 87(2)(b) yelled that the officers were choking him. However, according to PO Moynihan, this was not possible, as the officers were holding § 87(2)(b) under his arms, and were not holding him near his neck. PO Moynihan stated that neither he nor PO Carrasquillo took any action which restricted § 87(2)(b) breathing as they brought him inside.

PO Carrasquillo stated that when the officers began to carry § 87(2)(b) into the stationhouse, § 87(2)(b) began to yell. PO Carrasquillo did not recall if § 87(2)(b) complained that the officers were choking him. PO Carrasquillo denied making any contact with § 87(2)(b) neck as they carried him inside, and he did not see PO Moynihan do so. Neither officer took any action that would restrict § 87(2)(b) breathing.

§ 87(2)(g)

Allegation (S) Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Shawn Moynihan acted discourteously toward § 87(2)(b)

As noted, after officers lodged § 87(2)(b) in a holding cell at the PSA 7 stationhouse, EMS responded and transported § 87(2)(b) to § 87(2)(b) in the Bronx. PO Moynihan accompanied him there. § 87(2)(b) remained handcuffed at the hospital. According to § 87(2)(b) while at the hospital, PO Moynihan removed § 87(2)(b) face mask (worn to prevent the spread of COVID-19), and said to § 87(2)(b) "Now you're going to die from the corona."

§ 87(2)(b) did not sign medical release forms, and the investigation was unable to obtain his medical records, to identify medical personnel who attended to him at the hospital, or to obtain

video surveillance footage from the hospital.

PO Moynihan did not recall removing § 87(2)(b) face mask from § 87(2)(b) face and denied ever saying to § 87(2)(b) “Now you’re going to die from the corona.” He did not recall any conversation about § 87(2)(b) wearing or not wearing a mask, or about possible exposure to COVID-19.

§ 87(2)(g)

Allegation (T) Abuse of Authority: At the PSA 7 stationhouse, Police Officer Shawn Moynihan refused to provide his name to § 87(2)(b)

Allegation (U) Abuse of Authority: At the PSA 7 stationhouse, Police Officer Shawn Moynihan refused to provide his shield number to § 87(2)(b)

Allegation (V) Discourtesy: At the PSA 7 stationhouse, Police Officer Shawn Moynihan spoke discourteously to § 87(2)(b)

Allegation (W) Abuse of Authority: At the PSA 7 stationhouse, Police Officer Shawn Moynihan threatened to arrest § 87(2)(b)

Allegation (X) Abuse of Authority: At the PSA 7 stationhouse, Police Officer Victor Carrasquillo refused to provide his name to § 87(2)(b)

Allegation (Y) Abuse of Authority: At the PSA 7 stationhouse, Police Officer Victor Carrasquillo refused to provide his shield number to § 87(2)(b)

It is undisputed that PO Moynihan returned § 87(2)(b) from the hospital to the PSA 7 stationhouse. § 87(2)(b) was subsequently released from the stationhouse with a Desk Appearance Ticket.

§ 87(2)(b) stated that when he was leaving the holding cells, he asked PO Moynihan and PO Carrasquillo for their names and shield numbers. However, neither officer provided § 87(2)(b) with their identifying information. In response to his request for PO Carrasquillo and PO Moynihan’s names and shield numbers, PO Moynihan said, “Get the fuck out of here before I put your ass back in that cell.”

PO Carrasquillo, who was § 87(2)(b) arresting officer, remained at the stationhouse until after § 87(2)(b) was released. PO Carrasquillo stated that at some point, § 87(2)(b) asked for his name, which he provided to § 87(2)(b) verbally. § 87(2)(b) never asked for his shield number. PO Carrasquillo did not know if § 87(2)(b) requested PO Moynihan’s name or shield number, and he did not witness PO Moynihan refuse to provide § 87(2)(b) with that information. PO Carrasquillo also stated that he did not witness PO Moynihan say, “Get the fuck out of here before I put your ass back in that cell,” or ever say to § 87(2)(b) that he could re-arrest him or upgrade his charges.

PO Moynihan stated that when he and § 87(2)(b) then returned to the PSA 7 stationhouse, he again lodged § 87(2)(b) in a cell. PO Moynihan then asked if PO Carrasquillo needed assistance with arrest processing, but PO Carrasquillo did not need assistance. PO Moynihan then ended his tour and departed from the stationhouse. PO Moynihan was not present when § 87(2)(b) was released from custody. He did not recall § 87(2)(b) requesting his or PO Carrasquillo’s name or shield number after returning from the hospital and stated that neither he nor PO Carrasquillo refused to provide their name or shield number. Additionally, PO Moynihan denied ever saying to § 87(2)(b) “Get the fuck out of here before I put your ass back in that cell.” He did not recall making any statement to the effect that he could re-arrest § 87(2)(b) or upgrade his arrest charges. PO

Moynihan stated that he was not present at the stationhouse when § 87(2)(b) was released from custody.

PO Moynihan's memo book (Board Review 15) reveals that he ended his tour at 10:00 PM. Notes adjacent to the arrest stamp for § 87(2)(b) in the PSA 7 command log (Board Review 16, page 5) reveal that § 87(2)(b) was released from custody at 1:10 AM the next morning, three hours after PO Moynihan ended his tour. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (Z) Untruthful Statement: Police Officer Shawn Moynihan provided a misleading official statement to the CCRB.

On May 6, 2021, PO Moynihan provided a statement to the CCRB.

As addressed above, in the analysis of Allegation J, PO Moynihan stated that he did not recall saying to § 87(2)(b) "Get in the fucking car." Two videos captured PO Moynihan making the remark in question, but PO Moynihan testified that he did not recognize the voice as his own. As established above, the investigation determined that PO Moynihan made the remark in question, based both on his position relative to § 87(2)(b) at the time of this remark, his actions with regards to § 87(2)(b) at that time, and voice comparisons.

Per NYPD Administrative Guide Procedure 304-10 (Board Review 17), a misleading statement is one that is intended to misdirect the fact finder and materially alter the narrative by:

- a. Intentionally omitting a material fact or facts,
- b. Making repeated claims of "*I do not remember*" or "*I do not know*" when a reasonable person under similar circumstances would recall, or have been aware of, such material facts, or
- c. Altering and/or changing a member's prior statement or account when a member of the service is confronted with independent evidence indicating that an event did not occur as initially described, will generally be considered a misleading statement.

The phrase "Get in the fucking car" was captured clearly in the video shown to PO Moynihan during his CCRB interview (Board Review 08 at 45seconds). There is no competing audio which would make it difficult to identify the voice in question. The remark is loud and clear. PO Moynihan reviewed this clip twice and stated that he did not know if this was his voice. He also stated that he could not identify the voice. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 18).

- § 87(2)(b) [REDACTED]
- PO Carrasquillo has been a member of service for four years and has been a subject in four other cases with 17 allegations, none of which have been substantiated. § 87(2)(g) [REDACTED]
- PO Moynihan has been a member of service for nine years and has been a subject in thirteen other cases with 37 other allegations.
 - Case #201806669 involved substantiated allegations of a threat to damage or seize property, property damage, and discourteous language. The Board recommended Command Discipline B and the NYPD imposed Command Discipline B.
 - Case #201903141 involved a substantiated allegation of discourteous language. The Board recommended Instructions and the NYPD imposed Instructions.

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- § 87(2)(b) [REDACTED] civil attorney filed a Notice of Claim on his, claiming physical pain and suffering, mental anguish, emotional injuries, loss of liberty, embarrassment, humiliation, shame, indignity, damages to reputation, special damages, and financial loss that § 87(2)(b) [REDACTED] had incurred or would incur, including obligations for legal fees and expenses, and punitive damages. The claim sought \$1,000,000 as redress (Board Review 20). § 87(2)(a) [REDACTED]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]

Squad No.: 9

Investigator: <u>Samuel Ross</u>	Inv. <u>Samuel Ross</u>	<u>09/07/2021</u>
Signature	Print Title & Name	Date

Squad Leader: <u>Monique West</u>	IM <u>Monique West</u>	<u>9/13/2021</u>
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date

